
INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

MATTHEW MONTOYA,

Complainant,

vs.

COLORADO DEPARTMENT OF HUMAN SERVICES,
PUEBLO REGIONAL CENTER

Respondent.

The hearing in this matter was held on November 26, 1996, and December 4 and 16, 1996, in Denver before Administrative Law Judge Margot W. Jones. Respondent appeared at hearing through Toni Jo Gray, assistant attorney general. Complainant, Matthew Montoya, was present at the hearing and represented by Carol Iten, attorney at law.

Respondent called the following employees of the Department of Human Services (department), Pueblo Regional Center (PRC), to testify at hearing: Manual Cadena; Darrell Eurich; Loretta Solorzana; Manual Montano; John Keller; Herb Brockman; Francis Gallardo; JoAnn Drury; and Jim Duff. Respondent also called as a witness at hearing Conrad Becker, a client at PRC.

Complainant testified in his own behalf and called the following employees of PRC to testify at hearing: Marie Valencia; Carol Masias; Nancy McDonnell; Marie Simpson; and Fidel Maestas.

Respondent's exhibits 1 through 16 were admitted into evidence without objection. Complainant did not offer exhibits into evidence at hearing.

MATTER APPEALED

Complainant appeals the termination of his employment from Pueblo Regional Center for wilful misconduct.

ISSUES

1. Whether complainant engaged in the acts for which discipline was imposed;
2. Whether the conduct proven to have occurred constituted wilful misconduct;
3. Whether the decision to terminate complainant's employment was arbitrary, capricious, or contrary to rule or law;
4. Whether any back pay award to complainant should be reduced by the period of delay attributable to the unavailability of hearing dates on the State Personnel Board docket; and
5. Whether complainant is entitled to an award of attorney fees and costs under section 24-50-125.5, C.R.S. (1988 Repl. Vol. 10B).

PRELIMINARY MATTERS

1. At the conclusion of respondent's case in chief, complainant moved for a directed verdict. Argument was made by the parties on the motion on December 4, 1996. Complainant contended that respondent failed to make a prima facie showing that complainant engaged in the acts for which discipline was imposed and that the decision to terminate complainant's employment was reasonable. Complainant maintained that respondent failed to present any evidence that complainant injured PRC client, Conrad Becker. Since respondent failed to sustain its burden, it was complainant's position that the motion for directed verdict should be granted and the discipline overturned.

Respondent argued that on a motion for directed verdict the evidence should be viewed in the light most favorable to the party opposing the motion or, in this case, the respondent. Respondent argued that viewing the evidence in this light, the motion should be denied. Respondent contended that it made a prima facie showing that complainant engaged in the acts for which discipline was imposed, that the conduct proven to have occurred constituted wilful misconduct, and that the decision to terminate complainant's employment was neither arbitrary, capricious or contrary to rule or law.

Respondent argued that the testimony of its many witnesses was sufficient evidence from which to conclude that complainant was responsible for the injury to the PRC client and that the decision to terminate his employment was sustainable.

Complainant's motion for directed verdict was denied. Viewing the evidence in the light most favorable to the respondent, it was concluded that respondent made a prima facie showing that complainant injured the PRC client and that the termination of his employment was reasonable.

2. A sequestration order was entered at respondent's request.

3. Respondent moved to exclude from the hearing room Paul Barela, a business agent for AFSCME, on the grounds that respondent may call him as a rebuttal witness to testify about the R8-3-3 meeting. The motion was granted, however, he was not called by respondent as a witness.

4. Respondent called as a witness at hearing, Conrad Becker, a client at PRC. Complainant objected to the witness on the grounds that he was not competent to testify. Following an inquiry into the client's ability to communicate and understand the meaning of the oath to tell the truth, the client was deemed to be competent to testify.

FINDINGS OF FACT

1. Manual Montoya (Montoya), the complainant, was employed by PRC for five years as a developmental disability technician I (DDT I). Montoya's employment was terminated on April 22, 1996, for wilful misconduct.

2. At the time relevant to this appeal, in February, 1996, Montoya worked at Lattimer House, a residential treatment facility at PRC. At Lattimer House, Montoya worked under the supervision of Manuel Montano. The appointing authority for Montoya's position was Jim Duff, the director of PRC.

3. As a DDT I assigned to Lattimer House, Montoya was responsible for providing direct care to physically and developmentally disabled clients at Lattimer House. Eight clients reside at the house.

4. On February 15, 1996, Montoya was assigned to work at Lattimer House from 3 p.m. to 11 p.m. He worked alone at the house with the clients from 8:45 p.m. to 11 p.m. A co-worker went off duty at 8:45 p.m. and another co-worker reported to work at Lattimer House at 11 p.m., as Montoya completed his shift.

5. At approximately, 9:10 p.m. on February 15, 1996, Montoya was documenting treatment provided clients at Lattimer House. He

heard a noise on the patio at the house. He checked the patio to determine the reason for the noise. After turning on the patio light, complainant observed Conrad Becker (Becker), a resident of the house, lying on the patio. It appeared to Montoya that Becker had fallen.

6. Montoya went out on the patio and assisted Becker to his feet. It appeared that Becker struck his face when he fell against a picnic table on the patio. He had a scratch near his eye and the following day he had bruising around his eye. When Becker was injured, he was on the patio in the dark in his bare feet wearing oversized overalls that were too long.

7. Montoya assisted Becker in returning to the interior of the house. Montoya cleaned his wound. Approximately five to ten minutes later, Montoya called the nurse on duty who was located at another residential treatment site. He reported Becker's injury to the nurse. Montoya was advised by the nurse to place ice on the wound and to give Becker Tylenol for pain. The nurse on duty chose not to examine Becker that evening.

8. Montoya required Becker to remain awake until the third shift relief worker arrived at 11 p.m. Montoya made note of Becker's injury in the client's medical record and prepared an incident report documenting the circumstances of the injury.

9. Becker has resided at PRC for approximately 22 years. He is a 52 year old man. Becker has moderate mental retardation and a mood disorder. Becker has been diagnosed with bi-polar disease or psychoththalmic disorder. He has mild depression and mild mania. He has a good memory, a verbalization deficit, and engages in ritualistic behavior. For what is believed to be a psychoththalmic disorder, he is prescribed the drug, Lithium.

10. Becker is not always truthful and has been aggressive with fellow residents. He has been known to lie about thefts which he has perpetrated against fellow residents. He generally confesses easily to his own misrepresentations made about his conduct.

11. On or around February 15, 1996, Becker was observed by the treating psychologist at PRC to behave in an increasingly emotionally unstable manner. His obsessive compulsive disorder also increased during this period.

12. Becker's communication skills is limited. He responds to most questions in a yes or no fashion, pronouncing the sounds "yau", meaning yes, and "nu", meaning no. He sometimes nods his head affirmatively to mean yes or negatively to mean no. He also

communicates by pronouncing the first syllable of a word. Staff at PRC usually communicate with Becker by posing questions to him and allowing him to respond. For instance, if Becker is attempting to identify someone involved in an event, a staff member will quiz Becker if the individual is staff or a client. The staff member attempting to communicate with Becker holds up a finger on each hand, one finger representing a staff member and the other finger representing a resident. Becker indicates which category he is referring to by pointing to the finger representing that group.

13. On February 15, 1996, Becker had resided in Lattimer House for a few months. He had been removed from another residential treatment facility at PRC because of violent conflicts with residents.

14. On February 16, 1996, Manuel Montano (Montano), Montoya's immediate supervisor, arrived at work. At or around 7 a.m., Montano received a report from Carol Masias, who was departing Lattimore House after working the night shift. She advised Montano of Becker's injury. She reported that the injury was sustained the night before during Montoya's shift.

15. After receiving the report, Montano went to Becker's room to awaken him. Becker came to the common area in the house and greeted the staff. He was irritated and agitated when he awoke. Francis Gallardo, Manuel Cadena, and Loretta Solorozna (Solorozna), PRC staff members, were present at Lattimer House. Solorozna was present at Lattimer House to pick up a coffee cup she left behind during a previous visit. Manuel Cadena, a maintenance worker, was at the house to pick up Becker to assist him in performing maintenance work at PRC.

16. Solorozna observed that Becker had a black eye and asked him about it. Francis Gallardo, Manuel Cadena, and Montano were present during Solorozna's questioning of Becker. She was initially concerned that Becker may have gotten the black eye as a result of an altercation with another resident. However, when Solorozna asked if Becker received the black eye in a fight with a resident, Becker indicated that he was not in a fight with a resident.

17. Solorozna offered Becker choices. She asked whether he was injured by a patient or staff member. Becker responded by indicating that he was injured by a staff member. Becker initially indicated that the staff member who injured him was "Maa". Montano was alarmed that Becker appeared to be identifying him as the person who injured him.

18. Montano assisted Solorozna in communicating with Becker. Becker was shown a list of the employees who work at Lattimer House. Solorozna and Montano went through the list of names with Becker of the staff at Lattimer House. Becker chose Montano as the person who injured him from the list of staff members names.

Since Montano was not on duty the previous night, further inquiry was made of Becker about which staff member injured him.

19. Becker continued to be shown the list of staff names. Next, he selected Montoya's name from the list as the individual who caused his injury.

20. Cadena and Becker went to a pool area to perform maintenance work. Becker was so agitated that he was not able to work. He walked off to a nearby office area where he located Jo Ann Drury, a case manager at PRC, to show her his injuries.

21. It was apparent to JoAnn Drury that Becker was upset. By using the same process of deduction that Solorozna used, Drury was able to determine that Becker believed he was injured by Montoya.

22. Drury contacted Becker's psychologist, John Keller (Keller), and asked him to come speak with Becker. Keller found Becker in the pool area. Becker was very agitated over the injury he suffered to his eye. Keller used the same method of deduction with Becker to determine that Becker believed that he was injured by Montoya.

23. Keller reported to Herb Brockman, the residential director, that Becker alleged that Montoya injured him. Brockman questioned Becker in his room at the house about how he was injured. Consistent with the previous approaches used by staff, Brockman deduced from Becker's sounds and signals indicated that Montoya pushed Becker down and injured him.

24. Brockman notified Jim Duff(Duff), the director of PRC and Montoya's appointing authority, of the injury to Becker and of Becker's allegation against Montoya. Duff directed that pictures of Becker's injury be taken.

25. Duff requested that the Pueblo County Department of Social Services investigate Becker's complaint of abuse. Investigation by this agency was considered standard procedure at PRC whenever there was an allegation of client abuse. On February 16, 1996, Duff placed Montoya on administrative suspension with pay as a result of the allegation.

26. Ed Caskey, an employee of the Pueblo Department of Social Services, went to Lattimer House to investigate the complaint of client abuse. Caskey arrived at Lattimer House at the same time as an officer of the Pueblo County Sheriff's Department, who was also sent to investigate. Caskey prepared a report summarizing the information received from the staff and information about Becker's injury. Caskey and the sheriff's officer reached no conclusion about the cause of Becker's injury.

27. Darrel Eurich, the adult services supervisor III for the Pueblo County Department of Social Services, also investigated the complaint. On March 5, 1996, he prepared a report for PRC in which he concluded that it could not be determined who was responsible for Becker's injuries. During Eurich's investigation, he spoke with all the staff members who had contact with Becker on February 15 and 16, 1996, as well as the sheriff's deputy and the Department of Social Services employee who responded to Lattimer House on February 16, 1996.

28. Eurich made recommendations to Duff to improve the protocol followed by PRC in the event of an allegation of client abuse. Eurich recommended that the nurse on duty respond to the injured client at the time of the injury, instead of the following morning. Eurich advised PRC in his March 5, 1996, report that at the time the nurse treats the client, if an allegation of abuse is made, the nurse should immediately contact the sheriff's department and the county department of social services so that an immediate response can be made.

29. Eurich concluded that the information was inconclusive as to how Becker was injured. Eurich maintained that the evidence in the case was tainted because of the numerous staff members who were allowed to question Becker. He maintained that because of the delay in contacting the proper authorities in this case, it was not possible to collect evidence in a systematic and acceptable manner.

30. On March 7, 1996, Duff wrote Montoya to advise him that the results of the investigation were inconclusive and that he would be permitted to return to work at Lattimer House. Montoya's wife gave birth to their child at around this time. Montoya's request for family medical leave in order to stay with his family was granted.

31. On March 28, 1996, prior to Montoya's return to work from family medical leave, Duff decided that he should pursue the charges of patient abuse against Montoya further. Duff notified Montoya that effective March 28, 1996, Montoya was again placed

on administrative suspension with pay while the investigation of Becker's injuries was reopened.

32. Duff discussed the incident of February 15, 1996, in which Becker sustained his injury with numerous staff members. He received information from the same staff members who were interviewed by Eurich during his investigation. Duff asked each of the staff members six questions. These questions were: 1. does Becker lie; 2. does Becker falsely accuse others; 3. what is your opinion of Montoya's personality; 4. what kind of relationship does Montoya have with Becker; 5. what kind of relationship does Montoya have with other clients; and 6. Is there anything else that you might wish to add.

33. Duff was advised by some of the staff that Becker lies about other residents but does not lie about the staff. Some staff reported that Becker does not lie. One staff member reported that Montoya appeared under stress and ready to snap. Staff reported that Becker was known to take things that belonged to other residents.

34. On April 11, 1996, Duff advised Montoya that he would hold an R8-3-3 meeting with him on April 16, 1996. At the meeting, Montoya advised Duff that he did not injure Becker. Montoya told Duff that he did not know Becker to be a liar or to be a client who falsely accuses others. Montoya asked Duff to speak to three PRC employees, Manuel Cadena, the maintenance man who took Becker out of Lattimer House on February 16, 1996, Carol Masias, the employee who relieved Montoya at 11 p.m. on February 15, 1996, and Marie Valencia, a PRC employee who was present at Lattimer House when Becker awakened on February 16, 1996, and reported that Montoya injured him.

35. Following the first R8-3-3, Duff spoke with Manuel Cadena, Carol Masias, and Marie Valencia. After these interviews, Duff held a second R8-3-3 meeting with Montoya on April 19, 1996. At this meeting, Duff discussed the fact that Montoya had on two prior occasions been accused of patient abuse. In each instance, following an investigation, he was exonerated. Duff discussed the information he received after talking to the individuals that Montoya asked him to talk to, Carol Masias, Marie Valencia, and Manuel Cadena. Duff acknowledged the fact that Montoya's job performance rating during the period from 1991 to 1996 had been "commendable" in 1991 and "standard" in the remaining years.

36. Following the second R8-3-3 meetings, Duff decided to terminate Montoya's employment effective April 22, 1996. Duff had not been satisfied that there was no definitive answer

reached as to who caused Becker's injuries. He concluded there was sufficient information to find that Montoya was responsible for Becker's injuries. Duff relied upon the representations of Montoya's co-workers. He further placed great reliance on the information provided by Becker. Duff found that the information provided by Becker was believable.

37. Complainant filed an appeal of his termination from employment with the State Personnel Board on April 26, 1996. On May 3, 1996, the appeal was referred to the Colorado Civil Rights Division (CCRD) for investigation. Complainant waived an investigation by CCRD and on June 12, 1996, this matter was scheduled to be heard on July 16, 1996.

38. On June 24, 1996, respondent moved to continue the hearing date. On June 25, 1996, complainant filed a prehearing statement. On July 8, 1996, respondent's motion to continue the hearing was granted. On August 8, 1996, notice was given the parties that a hearing would be held in this matter on November 26, 1996. Complainant's counsel entered her appearance on August 8, 1996. Respondent's June 24, 1996, motion for extension of time to file a prehearing statement was granted on July 8, 1996. Respondent filed its prehearing statement on September 12, 1996.

39. On November 26, 1996, an evidentiary hearing was held. Respondent presented its case in chief on this date. At the conclusion of respondent's case, a hearing date of December 16, 1996, was set to reconvene the hearing to take testimony of the remainder of the parties' evidence. Complainant moved for directed verdict at the conclusion of the hearing on November 26, 1996. Hearing on the motion was held on December 4, 1996. The motion was denied and the hearing concluded on December 16, 1996.

DISCUSSION

Certified state employees have a protected property interest in their employment. The burden is on respondent in a disciplinary proceeding to prove by a preponderance of the evidence that the acts on which the discipline was based occurred and just cause exists for the discipline imposed. Department of Institutions v. Kinchen , 886 P.2d 700 (Colo. 1994); Section 24-4-105 (7), C.R.S. (1988 Repl. Vol. 10A). The board may reverse or modify the action of the appointing authority only if such action is found to have been taken arbitrarily, capriciously or in violation of rule or law. Section 24-50-103 (6), C.R.S. (1988 Repl. Vol. 10B).

The arbitrary and capricious exercise of discretion can arise in three ways: 1) by neglecting or refusing to procure evidence; 2) by failing to give candid consideration to the evidence; and 3) by exercising discretion based on the evidence in such a way that reasonable people must reach a contrary conclusion. Van de Vegt v. Board of Commissioners, 55 P.2d 703, 705 (Colo. 1936).

Respondent contends that the evidence offered by Becker and the employees at PRC establishes that complainant was responsible for the injuries suffered by Becker. Respondent maintains that this evidence establishes that complainant engaged in wilful misconduct and that his employment should be terminated.

Respondent finally contends that, if it is concluded that respondent has failed to sustain its burden of proof, then respondent should not be held responsible for any back pay award attributable to the congestion of the State Personnel Board docket. Respondent maintains that if it should be determined that the appointing authority acted arbitrarily, capriciously, or contrary to rule or law, it should be found that it is not responsible for back pay for the period from April 26 to June 12, 1996, and July to November, 1996. Respondent contends that during these periods it was not responsible for the delay in getting this case to hearing. It is respondent's position that these delays are attributable to the State Personnel Board docket and the unavailability of hearing dates.

Complainant contends that respondent failed to establish by preponderant evidence that complainant caused Becker's injury. Complainant contends that Becker was not competent to testify at hearing. Complainant maintains that Becker's testimony, in conjunction with the testimony of other PRC staff, fails to establish that complainant was responsible for Becker's injury on February 15, 1996.

Complainant argues that Becker's testimony, that he liked complainant and he wanted him to return to work at his house, is inconsistent with a finding that complainant injured Becker. Complainant further notes that the evidence was tainted by the procedure used by PRC staff who questioned Becker en masse and used leading questions to prompt him.

Complainant finally notes that his actions on the night of February 15, 1996, when Becker was injured were inconsistent with the allegation of patient abuse. Complainant emphasizes the fact that he found Becker on the patio at Lattimer House, that he tended to his injuries for approximately 5 to 10 minutes, called

the nurse on duty to report the injury, received instructions about how to treat Becker and then prepared an incident report.

It is found that the evidence presented at hearing does not support the conclusion that complainant was responsible for Becker's injuries or that he committed patient abuse. Respondent called Becker as a witness at hearing. Respondent called the witness disclaiming any responsibility for the witness' testimony. Respondent asked that the administrative law judge determine whether Becker was competent to testify at hearing. Becker appeared lucid, cognizant of his responsibility to tell the truth, able to swear to an oath to tell the truth, and marginally communicative, he was determined to be competent to testify at hearing. His testimony did not support the conclusion that complainant injured him.

Becker appeared to comprehend the meaning of the questions asked him. Respondent's direct examination of Becker established that he was not fearful of complainant nor did he feel anger toward complainant. Becker testified that he wanted complainant to return to work at Lattimer House. Becker offered no testimony that he was tripped and he gave no indication that complainant was responsible for his injuries.

However, even if this ruling pertaining to Becker's competence to testify is found to be in error, it still cannot be concluded that there was sufficient evidence upon which to sustain complainant's termination from employment for client abuse. Respondent offered much evidence about the non-verbal signs used by the staff to communicate with Becker and used by Becker during the investigation. Respondent contends that this evidence established that complainant was the individual who injured Becker. However, Becker's non-verbal signs were not shown during the hearing to have any consistent meaning.

Finally, PRC psychologist John Keller who worked with Becker over many years testified that Becker believed that he was telling the truth when he identified complainant as his assailant. Keller's testimony suggested that Becker may have been mistaken in his identification, though in good faith. Keller also testified that during this period Becker was emotionally unstable.

Respondent argues that Becker should not be disbelieved simply because he is developmentally disabled. Respondent further argues that the PRC staff, who had many years of contact with Becker, accurately understood and testified about Becker's allegation. Respondent contends it acted responsibly when it acted on the report of client abuse.

Respondent acted responsibly in investigating Becker's injuries. However, respondent erred in concluding that it had grounds for the imposition of disciplinary action. Contrary to respondent's contention, it was shown that the information disclosed during the investigation was tainted and did not provide a basis to find complainant responsible for Becker's injuries. The evidence established that the PRC nurse, the county social services personnel, and the sheriff's department, who might have been in the best position to make a judgment about Becker's condition on the night of February 15, 1996, did not interview or examine Becker on the night of the injury.

The record reflects that by the time a nurse examined Becker's injuries, and social services and sheriff's department personnel investigated, there was a substantial amount of water under the bridge. At least five staff members talked to Becker on the morning of February 16, 1996, each one using a communication technique which required them to prompt Becker's responses.

In addition, respondent's contention that an award of back pay should exclude those periods of delay in proceeding to hearing which are attributable to the State Personnel Board's docket were considered and deemed to be without merit. The evidence does not support the conclusion that the delay in getting the case to hearing is attributable to the Board's docket. And, even if it was, respondent offered no support for its contention that such a delay would result in the reduction of the back pay award.

It is found that, while the decision to investigate Becker's allegations of abuse was well founded, the ultimate determination that complainant was responsible for the abuse was groundless. See, Kelso v. Department of Higher Education, State Personnel Board case number 94B100; Thus, it is concluded that the personnel action from which this appeal arose was groundless and complainant is entitled to an award of attorney fees under section 24-50-125.5, C.R.S. (1988 Repl. Vol 10B).

CONCLUSIONS OF LAW

1. Respondent failed to present evidence sufficient to support the conclusion that complainant engaged in client abuse.
2. Respondent failed to presented evidence from which it could be concluded that complainant's conduct constituted wilful misconduct.
3. The decision to terminate complainant's employment was arbitrary, capricious and contrary to rule or law.

4. Respondent is not entitled to an order awarding complainant back pay which excludes those periods which respondent contends were attributable to the unavailability of hearing dates on the State Personnel Board docket.

5. The personnel action from which this appeal arose was groundless, thus entitling complainant to an award of attorney fees.

ORDER

1. Respondent is directed to reinstate complainant to the position he held prior to his termination from employment.

2. Respondent is directed to pay complainant full back pay and benefits from the date of his termination to the date of reinstatement, less the appropriate offset required by law.

3. Complainant shall be awarded attorney fees and costs under section 24-50-125.5 C.R.S.(1988 Repl. Vol. 10B).

Dated this 30th day
of January, 1997.

Margot W. Jones
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), 10A C.R.S. (1993 Cum. Supp.). Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), 10A C.R.S. (1988 Repl. Vol.); Rule R10-10-1 et seq., 4 Code of Colo. Reg. 801-1. If a written notice of appeal is not received by the Board within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is **\$50.00** (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record should contact the State Personnel Board office at 866-3244 for information and assistance. To be certified as part of the record on appeal, an original transcript must be prepared by a disinterested recognized transcriber and filed with the Board within 45 days of the date of the notice of appeal.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar

days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double spaced and on 8 ½ inch by 11 inch paper only. Rule R10-10-5, 4 CCR 801-1.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R10-10-6, 4 CCR 801-1. Requests for oral argument are seldom granted.

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ must be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ, and it must be in accordance with Rule R10-9-3, 4 CCR 801-1. The filing of a petition for reconsideration does not extend the thirty calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

CERTIFICATE OF MAILING

This is to certify that on the _____ day of January, 1997, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Carol Iten
Attorney at Law
789 Sherman St.
Denver, CO 80203

and, through interagency mail to the following individual,

Toni Jo Gray
Assistant Attorney General
1525 Sherman St.
Denver, CO 80203
